

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. A-5814

PETITION OF MAUREEN T. KUGLER
(Hearing held October 9, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, November 8, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes to construct a deck/gazebo that requires a 5.50 foot variance as it is within 19.50 feet of the rear lot line. The required setback is twenty-five (25) feet.

Andrew Kugler represented the petitioner at the public hearing.

The subject property is Lot 40, Block 3, Buckley Downs Subdivision, located at 13121 Venetian Road, Silver Spring, Maryland, 20904, in the R-90 Zone (Tax Account No. 02639835).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a deck/gazebo in the southeastern section of the lot.
2. The petitioner testified the variance request comes as result of the siting of the house, which prevents construction in other areas of the lot. The petitioner testified that the deck/gazebo could not be located in the rear yard because the structure would block the light of the rear windows and would require the removal of the existing trees.
3. The petitioner testified that an existing stockade fence is located at the southern and eastern boundaries of the property and would screen the proposed deck/gazebo. See, Exhibit Nos. 4(a) and 6(b). The petitioner testified that the location, as proposed, for the deck/gazebo would permit the future construction of a pool.
4. The petitioner testified that the proposed location would permit handicap visitors access to the property and would not materially impact the view for

neighboring and adjoining properties. Letters of support are entered in the record as Exhibit Nos. 7(a) through 7(e).

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's property has no exceptional topographical or other conditions peculiar to the property. The Board further finds that the pipe-stemmed shape of the petitioner's lot is a common characteristic in the neighborhood. See, Exhibit No. 9 (zoning vicinity map).

The Board notes that new construction could be located elsewhere on the petitioner's property without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 5.50 feet from the required twenty-five (25) rear lot line setback for the construction of a deck/gazebo is denied.

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Angelo M. Caputo and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of November 8, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.